

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

THOMAS G. FIGANIAK and
VALERIE A. FIGANIAK,

Plaintiffs,

v.

CASE NO: 5:15-CV-111 (STAMP)

FRATERNAL ORDER OF OWL'S HOME
NEST, LOYAL ORDER OF OWLS NEST
LODGE 2558 d/b/a THE OWLS NEST, YE
OLDE ALPHA, INC., CRAIG TYLER
PEACOCK, JARRETT CHANDLER, and
TYLER JOHNSON,

Defendants.

**MOTION TO DISMISS
BY DEFENDANT, FRATERNAL ORDER OF OWLS HOME NEST, INC.,
FOR FAILURE TO STATE A CLAIM AND INSUFFICIENT SERVICE OF PROCESS**

Fraternal Order of Owls Home Nest, Inc.,¹ by counsel, Michelle Lee Dougherty and Steptoe & Johnson PLLC, respectfully moves, pursuant to Fed. R. Civ. P. 12(b)(5) and 12(b)(6), to dismiss Plaintiffs' Complaint against it. As set forth more fully in the accompanying memorandum of law, filed contemporaneously herewith and incorporated by reference, Plaintiffs' Complaint fails to state any factual or legal basis to find Fraternal Order of Owls Home Nest, Inc., a Pennsylvania non-profit corporation, liable for the acts of the completely separate, unaffiliated corporation Loyal Order of Owls Nest Lodge 2558 d/b/a The Owls Nest, a West Virginia for-profit corporation. Furthermore, Plaintiffs have not served Fraternal Order of Owls Home Nest, Inc., and the Pennsylvania corporation should be dismissed for that independent reason, as well.

¹ Fraternal Order of Owls Home Nest, Inc. is incorrectly named in the style of the case as "Fraternal Order of Owl's Home Nest."

WHEREFORE, Fraternal Order of Owls Home Nest, Inc. respectfully requests this Honorable Court GRANT its motion and to ORDER that the Complaint of Plaintiffs, Thomas G. Figaniak and Valerie A. Figaniak, against it be DISMISSED with prejudice as to it and that it be DISMISSED from this action.

Respectfully submitted,

/s/ Michelle Lee Dougherty

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Inc.*

STEPTOE & JOHNSON PLLC
Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2015, I electronically filed the foregoing *Motion to Dismiss by Defendant, Fraternal Order of Owls Home Nest, Inc., for Failure to State a Claim and Insufficient Service of Process* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Michelle Lee Dougherty
Michelle Lee Dougherty (WV #9651)